

Direct Phone Number +1 512-867-8418
mary.mendoza@haynesboone.com

July 6, 2022

Director, Air Enforcement Division
U.S. Environmental Protection Agency MC
2242A
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Director of Litigation
Litigation Division, MC-175
Texas Commission on Environmental
Quality
P.O. Box 13087
Austin, TX 78711-3087

Director
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1201 Elm Street
Dallas, TX 75270

Division Chief (AG # CX9078975896)
Environmental Protection Division
Office of the Attorney General of Texas
P.O. Box 12548, MC 066
Austin, TX 78711-2548

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20460-7611

**RE: Force Majeure Request
Tokai Carbon CB (formerly Sid Richardson) Borger Plant**

Dear Sir/Madame:

This is a notification from Tokai Carbon CB that Tokai is invoking the Force Majeure clause pursuant to Paragraph 70 the Consent Decree, lodged on December 22, 2017, among the United States of America, the Louisiana Department of Environmental Quality, the State of Texas, and Sid Richardson Carbon, Ltd. (hereinafter the “CD”). Tokai Carbon CB, Ltd. (“Tokai”) is a successor in interest under the terms of the CD.

We have previously verbally notified you (other than EPA at the Office of the Attorney General) of recent events at the Tokai’s Borger facility regarding the unexpected and catastrophic failure of the new, replacement South Flue Gas Fan (the “Fan”) on June 26, 2022. This has resulted in Tokai being unable to fulfill its obligations under certain provisions of the CD, specifically:

- Paragraphs 17, 23, 24, 27 and 31 requiring Tokai to install by April 1, 2021, and thereafter, Continuously Operate, a Wet Gas Scrubber emission control system (“WGS”) and a Selective Catalytic Reduction emission control system (“SCR”) at its Borger facility to achieve reductions/meet certain limits in sulfur dioxide and nitrogen oxide emissions from affected process sources;
- Paragraph 32 requiring Tokai to install, and thereafter, Continuously Operate a WGS to achieve reductions in particulate matter emissions from process sources; and
- Paragraph 37 prohibiting Tokai from using flares at its Borger Facility beginning April 1, 2021.

Tokai has used its best efforts to mitigate the impact of this Force Majeure event and is continuing to evaluate the impact of the Fan failure on its operations. Tokai will provide further written notice pursuant to paragraph 70 of the CD as it has more information. Tokai would like to discuss with you the impact of the Fan failure and its impacts on operations.

More detail on the Fan failure and Tokai’s efforts are discussed below.

**A Force Majeure Event Has Occurred Necessitating
an Extension of Certain Compliance Deadlines**

Paragraph 70 of the CD reads:

“Force Majeure,” for the purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, its Contractors, or entity controlled by the Defendant that causes a delay or impediment to performance in complying with any obligation under the Consent Decree despite the Defendant’s best efforts to fulfill the obligation including, but not limited to, delays caused by labor strikes, transport delays, and civil unrest, depending on the circumstances of the particular claim. The requirement that Defendant exercises best efforts to fulfill the obligation includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event, (a) as it is occurring, and (b) after it has occurred to prevent or minimize any resulting delay and/or violation and/or emissions during such event to the greatest extent possible. Force Majeure does not include Defendant’s financial inability to perform any obligations under this Consent Decree. Unanticipated or increased costs or expenses associated with the performance of Defendant’s obligations under the Consent Decree shall not constitute circumstances beyond Defendant’s control, nor serve as the basis for an extension of time under this Section and shall not constitute an event of Force Majeure.”

Tokai bases its request on the unforeseen failure of the fan and the damage that the fan failure caused to the SCR and WGS.

At 6:16 pm on Saturday, June 25, 2022, the Borger plant placed the new Fan into service. As you may recall, the South Flue Gas fan suffered a dangerous, catastrophic failure on October 2, 2021. As we have discussed, as a result of the October 2021 fan failure, the Borger plant has been operated at a substantially reduced capacity for most of the time since the fan failure. Tokai's customers that produce tires for truck and passenger vehicles have been forced to reduce or shut down tire production due to Tokai's inability to produce carbon black at the Borger plant. The Borger Fan issues and the SCR and WGS issues have significantly contributed to the difficult supply chain problems in the US tire industry.

Since the October 2021 fan failure, Tokai has been working diligently to replace the fan. Tokai's investigation into the October 2021 fan failure indicated a likely cause was vibration due to welding from the manufacturing process. However, Tokai also evaluated other potential causes and committed to identifying additional improvements to protect fan integrity and to monitor fan operations so that any early indications of a pending malfunction could be noticed and the Fan could be shut down before a failure. Specifically, Tokai undertook the following extraordinary measures to guard against Fan failure:

- Complete structural column replacement for the fan bearing pedestals
- Liquid dye penetrant tests on the fan blading
- Magnetic particle testing for all welding on fan rotor
- Precision-based cold balancing of fan rotor
- Installation and testing of multi-plane vibration instrumentation for fan-bearing assemblies equipped with control system alarms and trips
- Installation and testing of bearing assembly temperature indication with remote alarm and trip capability
- Precision-based motor/coupling/fan rotor alignment
- Motor electrical protection using Multilin system
- Key fan operational parameters displayed for operator monitoring and controls
- Fan damper positional verification.

Despite these extraordinary precautionary measures, at 7:44 pm on Sunday June 26, 2022, the Fan suffered a dangerous, catastrophic failure. The Fan blades and housing blew apart in explosive fashion, sending pieces of the assembly flying through the plant. The plant was immediately shut down in full to assess damage and determine the ability to safely operate the equipment. The plant began the process of restarting at reduced capacity using the remaining North Flue Gas Fan on Wednesday June 29th. During the start-up process, the plant operators discovered that the Fan failure appeared to have damaged the SCR, and the plant was unable to start. As we informed DOJ and TCEQ by phone/voicemail, Tokai was asserting a force majeure and restarting without

the SCR and WGS. The plant restarted units between Saturday July 2nd and Sunday July 3rd with Units 1, 3, and 4 being run through the boilers and Unit 2 being flared. Boiler flue gas is now bypassing the scrubbing unit. The plant continues to operate at reduced capacity.

Tokai's initial assessment indicated the most likely cause of the issue with the SCR was that the Fan failure blew debris into the SCR catalyst preventing gas from passing through the catalyst bed. Tokai immediately contacted the contractor handling the catalyst, Catalyst Handling Resources (CHR), and arranged to have a crew at the facility at their first availability, which was Friday July 1. The crew arrived on Friday, July 1 at approximately 7:00am and worked throughout the weekend 24/7. The catalyst in the SCR was unplugged on Saturday and a complete inspection of the SCR and WGS was conducted between Sunday and Tuesday. During this inspection, Tokai discovered additional items needing repair, and CHR completed welding repair in the SCR interior. Halder Topsoe, the WGS designer and OEM is scheduled to be at the plant late Thursday afternoon, July 7th, (personnel traveling from Denmark) for a more thorough inspection of the WGS convertor and condenser, which will be done on Friday July 8th.

After the inspection and any potential repairs, the target date for restarting the SCR and WGS will be Monday, July 11th. At that time, the plant will run at a 60-70% production rate with all flue gases running through the North Flue Gas Fan.

**Tokai Undertook Best Efforts to Comply with the CD
Despite the Force Majeure Event, and Made Every Effort to
Prevent the Event**

Tokai undertook its best efforts to prevent a Fan failure. As described above, Tokai took numerous measures to address potential modes of failure and to monitor for any abnormalities in Fan operations. Further, in the aftermath of the Fan failure, Tokai undertook best efforts to restore the SCR and WGS to operation. However, due to the SCR contamination, gas could not pass through the catalyst. Tokai has worked closely with its contractors on the WGS and was able to bring contractors to the site within days to work on the WGS.

CONCLUSION

Due to all of the foregoing, Tokai hereby invokes Paragraph 70 of the CD at the Borger Facility. This request arises from events out of Tokai's control. The Fan failure has made it impossible to comply with the provisions of the CD until the Fan is successfully replaced and operates as designed. Tokai's Fan failure remains an evolving issue as the plant works to restore the WGS to operation and Tokai may experience further delays.

We appreciate your consideration of Tokai's request. We would appreciate an opportunity to meet with you to discuss the issues in this letter.

As always, we are available to answer any questions or provide additional information if needed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mary Simmons Mendoza', written over the printed name.

Mary Simmons Mendoza

